IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

MFA.No. 735 of 2000

OP(Arb.)No.9 of 1996 SUB COURT, THODUPUZHA
.....

APPELLANT/PETITIONER:

K.E.JOSE, S/O FEBE, AGED 45,
KOTTALGHAT HOUSE, PALLIPURAM P.O.,
CHERTHALA, ALAPPUZHA.

BY ADV. SMT.BINDU.C.G.

RESPONDENTS/RESPONDENTS:

1. MERCY JOY, W/O C.J.JOY, AGED 39, KOCHUPARAMBIL HOUSE, MEMADANGU P.O., ARAKKUZHA, MUVATTUPUZHA.
2. BENNY CHERIAN, S/O CHERIAN, AGED 45, DO. DO.
3. K.M.JOSE. KOCHUPARAMBIL HOUSE, VAZHITHALA P.O., THODUPUZHA.
4. EMMANUEL K.GEORGE, DO. DO.
5. P.V.JOSEPH, PULIMALAYIL HOUSE, MYLACOMB P.O., THODUPUZHA.
6. V.T.THOMAS VELANMARIKUDIYIL HOUSE, BHARANANGANAM, PALA, KOTTAYAM DIST.

R1 BY ADV. SRI.K.BABU THOMAS

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 735 of 2000

JUDGMENT

Koshy, J.

The petition filed by the appellant to set aside an arbitration award was dismissed by the court below on the question of time bar by the order impugned in this appeal. According to the appellant, he was one of the partners of a partnership firm having the name and style "Dahlia Tourist Home" at Pampady, Kottayam. Respondents 1, 2 and late Philip Joseph were the other partners. The appellant and the second respondent are brother-in-laws and the first respondent is a relative of appellant's wife. Respondents 3 to 6 are the Arbitrators. When dispute arose, the matter was referred for arbitration on 15.10.1988. Since the award was not filed, O.P.(Arb.)No.19/89 was filed for a direction to the Arbitrators to file the award. In that OP the appellant was a party

and that OP was dismissed when the award was filed in court with notice to the appellant. Further, the appellant's brother-in-law, who is the second respondent, filed O.P.(Arb.)No.16/91 to set aside the award, on the very same contentions and in that case also the appellant was a party and the judgment in that case is Exhibit B1. It was dismissed holding that the appellant as well as the counter petitioners therein had notice of filing of the award as early as on 8.11.1990. But, the petitioners in the above case or the appellant herein did not file any appeal. So, that judgment is binding on them. The appellant has got notice of award on 8.11.1990, while O.P.(Arb.)No.19/89 was pending. When he was examined as PW1, he stated that he was the third respondent in O.P.(Arb.) No.16/91 and being parties in O.P.(Arb.)Nos.19/89 and 16/91, he knew that the Arbitrators have filed the award in court. He did not file any appeal because deceased Philip Joseph has promised him

that he will satisfy his claim. The OP filed by the brother-in-law is binding on him, as he was a party to the proceedings and he got notice of the award in O.P.No.19/89 on 8.11.1990. The petition to set aside the award was clearly time barred, as the present petition for setting aside the award was filed only in 1996. Under Section 119(b) of the Limitation Act, petition for setting aside the award has to be filed within thirty days from the date of service of notice of filing the award. In view of the above, there is no merit in the appeal, as the petition for setting aside the award was filed after the time fixed under the Act.

The appeal is dismissed.

(J.B.Koshy, Judge)

20th July, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.735 of 2000

JUDGMENT

20th July, 2007